In the Matter of the Arbitration	)	
	)	
between	)	
	)	
WASHINGTON FEDERATION OF STATE EMPLOYEES	)	
(Union)	)	OPINION AND AWARD
	)	AAA No. 01-17-0005-9572
and	)	SAMUEL RABIDEAU GRIEVANCE
	)	
WASHINGTON STATE DEPARTMENT OF EMPLOYMENT SECURITY	)	
(Employer)	)	

BEFORE: Kathryn T. Whalen, Arbitrator

APPEARANCES:

For the Union:

Christopher J. Coker
Younglove & Coker, P.L.L.C.
Westhills II Office Park
1800 Cooper Point RD SW, BLDG #16
PO Box 7846
Olympia, WA 98507-7846

For the Employer:

John C. Jaquish
Assistant Attorney General
7141 Cleanwater Drive SW
Olympia, WA 98507

HEARING: June 12 & 13, 2018

RECORD CLOSED: June 27, 2018

AWARD ISSUED: July 9, 2018

I. INTRODUCTION

Effective April 27, 2017, Washington State Employment Security Department (Employer or ESD) discharged WorkSource Specialist 4/Disabled Veterans Case Manager Samuel Rabideau (Grievant) for violation of ESD Policy 1016 (Employee Conduct) and ESD Policy 3010 (Time and Leave for Employees). The Employer concluded that Grievant repeatedly failed to work his scheduled work hours, failed to submit leave slips for his absences, falsely certified on his time sheets hours he had not worked, and was dishonest when questioned by his supervisor.

Washington Federation of State Employees (Union or WFSE) filed a grievance which alleged that Grievant's termination violated the just cause provision of the parties' Collective Bargaining Agreement (CBA). The Employer denied the grievance. The parties were unable to resolve this dispute and the Union submitted it to arbitration.

This case is administered by the American Arbitration Association (AAA). The parties selected me to serve as arbitrator pursuant to AAA procedures. A hearing was held on June 12 and 13, 2018, at the Office of the Attorney General in Kennewick, Washington. ChaRae Kent, certified court reporter (Kennewick) recorded and transcribed the hearing. Transcription services were provided through Buell Realtime Reporting of Seattle, Washington. The parties were accorded a full opportunity to present evidence and argument in support of their respective positions.

The parties agreed that this case is properly before me and that there are no issues of arbitrability. They also agreed that if I sustain the grievance, I will retain jurisdiction for 90 days to resolve disputes concerning the implementation of any remedy awarded.

The parties elected to submit closing oral arguments on June 13, 2018. The Court Reporter recorded and transcribed those arguments. I closed the record upon receipt of the Court Reporter's official transcript of the proceedings.

II. ISSUES

The parties agreed the issues are:

Was there just cause to terminate Grievant?
If not, what is the remedy?

III. CONTRACT AND POLICIES

A. Contract

ARTICLE 27
DISCIPLINE

27.1 The Employer will not discipline any permanent employee without just cause.

27.7 Pre-Disciplinary Meetings
Prior to imposing discipline, except oral and written reprimands, the Employer will inform the employee and Union staff representative in writing of the reasons for the contemplated discipline, an explanation of the evidence, copies of written documents relied upon to take the action and the opportunity to view other evidence, if any. This information will be sent to the Union the same day it is provided to the employee. The employee will be provided an opportunity to respond either at a meeting scheduled by the Employer, or in writing if the employee prefers. A pre-disciplinary meeting with the Employer will be considered time worked. Excluding oral and written reprimands, the Union will be provided copies of disciplinary actions. Employer Exhibit (E) -1.

B. Policies

Policy 1016 –Employee Conduct

3. Integrity and Economy in the Use of Resources

c. Employees are expected to be at work and conduct agency business on time and according to their approved work schedule.

Policy 3010 – Time And Leave For Employees

Employees are responsible for adhering to assigned work schedules and keeping management informed of deviations. Responsible for monitoring their own leave balances so leave balances are not exceeded and requesting leave in advance whenever possible. Responsible for accurately documenting time worked and leave taken. Responsible for working overtime at management request should it be necessary and for confirming pre-approval has been granted to work overtime. Pre-approval can be assumed where management has made the request to work overtime. E-3.

IV. DECISION

I find there was just cause to terminate Grievant. In the opinion that follows, I set forth my factual findings, reasoning and conclusions.

A. Factual Summary

1. Background

The ESD hired Grievant on December 16, 2009. For most of his employment, his job was that of a Disabled Veterans Case Manager. In that capacity, he provided employment and training services to veterans. In a nutshell, Grievant helped veterans with barriers to find employment.

Grievant's work hours were 8 a.m. to 5 p.m., Monday through Friday. He reported to work at ESD's WorkSource Columbia Basin office in Kennewick. In 2010, he began spending Thursday each week in Pasco at the Columbia Basin Veterans Opportunity Center (VOC) in order to provide veteran outreach at that location. Grievant's work hours - 8 a.m. to 5 p.m.–were the same at the VOC.

Grievant was good at his job. His performance evaluations indicated that he excelled at connecting and communicating with veterans about program services. Union Exhibit (U) – 10. His Achilles Heel, however, was attendance.

Robert Goad is a WorkSource Supervisor. He began supervising Grievant in September of 2013 when he took over supervising the veteran's program. With some interruptions, Goad supervised Grievant for close to six years.[1] Goad explained that Grievant was great with the veterans - his only issue was that Grievant was frequently late to work. Grievant was 10-15 minutes late to work two to three times a week. Tr. 93.

Goad dealt with this problem by talking to Grievant about it. He also addressed it on Grievant's evaluation of December 31, 2013. A short time later, in March of 2014, Goad again discussed the problem with Grievant and told him that this would be his last verbal reprimand. Goad advised him that if it continued, a written reprimand would follow and progressive disciplinary action would begin. U-8.

Goad explained that as a supervisor, he always tried to deal with problems at the lowest level, by coaching. According to Goad, Grievant responded positively when he discussed the lateness issue with him and always admitted that he was late. Tr. 97.

A little over two years ago, in 2016, David Browne became the Administrator of the ESD in Kennewick. All employees at that office report to him, including Goad. Prior to this job, Browne had served (among other things) as an investigative manager for the State. In addition, for 27 years, he was employed by Washington State Patrol in various capacities (trooper, sergeant, detective). He has an extensive history of performing investigations.

[1] Jack Fitzgerald took over supervision of the program for approximately 1 1/2 -2 years beginning in March of 2014. After Fitzgerald left, Goad again became supervisor of the veteran's program. Transcript (Tr.) 90-92.

As Administrator, Browne took over supervision of Grievant to relieve Goad of some workload. Browne's first impressions of Grievant were that he was personable and that he enjoyed helping veterans. Browne had no concerns with Grievant's work, other than his sometime tardiness and untimely reports. Browne sent an email to Grievant on one occasion when Grievant was late for an ESD team meeting. He advised Grievant that it was imperative that he be on time at work and punctual for scheduled meetings. Tr. 22; E-5.2.

2. Grievant's discharge

One day Browne was walking through the ESD office and overheard an employee telling another that the VOC was not open to the public from 8 a.m. to 5 p.m. but instead its hours were more limited. Browne was concerned, because Grievant's hours on Thursday – like all other work days – were 8 a.m. to 5 p.m.

Browne's assumption was that Grievant had been reporting to work at the VOC at 8 a.m. Had he known otherwise, he would have had Grievant come first to the Columbia Basin office and then go to the VOC at 10 a.m. The VOC was about six miles away. Tr. 23-24.

Browne checked the VOC website and it said it was open from 10 a.m. to 2 p.m. He then called the VOC and asked the person who answered the phone their hours; that person confirmed that the VOC was open to the public from 10 a.m. to 2 p.m. E-6; Tr. 24.

Browne briefed ESD Eastern Regional Director Jennie Weber of the situation. She told him she needed facts about what was going on. He decided to do some drive-by's of the VOC; he wanted to make sure he had all the facts right before he talked with

Grievant. Browne was the only administrator in the region at the time, so beginning in Mid-August of 2016; he observed Grievant's actions on days that he had time, over a period of months.

Browne discovered that Grievant and his vehicle repeatedly were not at the VOC at 8 a.m. On a number of occasions, Browne observed Grievant's vehicle at his residence; saw him leave his residence; and also saw Grievant arrive at the VOC shortly before or after 10 a.m. Browne also discovered that on some occasions Grievant extended his lunches by 40 to 45 minutes. His scheduled lunch was for an hour. E-6.

Based upon his observations, on 13 different days, Browne concluded that over 15 hours were not accounted for on Grievant's time sheets – Grievant was neither at the VOC nor had he requested leave. E-5.4. Browne believed this was a conservative estimate, because it was only based on the days that he had time to observe Grievant. E-6.

Browne's last observation occurred on January 11, 2017. On January 12, he met with Grievant at the Columbia Basin office. Goad also was present. Browne started by asking about how things were going at the VOC and his work hours.[2] He asked Grievant what hours he was working there. Grievant initially said 8 a.m. Browne told Grievant that he had done his "due diligence." He advised Grievant of the hours on the VOC website and went over his observations which he had in his case notes. E-6; Tr. 39; Tr. 99.

Once confronted with this information, Grievant admitted that Browne was right. In an attempt to explain why he went in later to the VOC, Grievant offered that he would

[2]At some point, Browne told Grievant that he could have Union representation, but Grievant declined representation.

make or receive phone calls at night at home. He admitted, however, that he had not asked for a change in work hours. E-6; Tr. 40, 41; Tr. 100,101.

Grievant also said that he did not want to make excuses, but mentioned his condition and/or that he was on medication.[3] Ultimately, Grievant took responsibility and admitted to Browne's observations. He offered that he had been doing it for awhile (five years). Browne asked Grievant to write a report about his hours and Grievant said he was willing to do that. Tr. 38-41; Tr. 100, 101; E-6.

Grievant provided a letter to Browne on January 27, 2017. That letter provided in part:

> Thank you for this opportunity to provide information directly to you to resolve and correct my conduct with not adhering to the (ESD) and WorkSource Columbia Basic [sic] Attendance Policy, rules and regulations. Specifically, as it relates to my behavior at Veteran Outreach and daily lunch breaks.
>
> Please know that I am willingly providing this information without guidance or representation from the Local Union or other sources. The information provided is to the best of my ability as I can recall. That the following pages will be facts, times, and dates without explanation or justification.
>
> Also know that I will not use my [redacted] to justify my conduct or behavior. That (ESD) has provided outstanding support with me seeking treatment and accommodations. Although the long term effects of prolonged sleep-deprivation, chronic pain, and physiological effects of the [redacted] affected by judgment [sic]. It was my failure to keep (ESD) Leadership informed of my conditions and what I required to succeed and meet (ESD) expectations.
>
> I am going to start with 2016 and January 2017 the most recent calendar year as the frequency and duration of occurrences are the greatest descending with less occurrences and frequency in years past. I am not contesting the information you obtained during the due diligence investigation.

[3] At hearing, Grievant disclosed that he has been diagnosed with decompression sickness level two which is a permanent disability. During the time period of this dispute, he was in significant pain and taking several medications. Tr. 174, 175, 185.

> I fully understand the work that was not preapproved in terms of exchange time or working from home are against policy, that although these things occurred from time to time, I do not want to claim that this was taking place weekly.
>
> * * *
>
> With the OUTLOOK concerns at the VOC I primary [sic] used the time blocks as place holders to use to reconcile with my case notes of what accrual took place, and rescheduled for no-show appointments when I could view my OUTLOOK in Kennewick. At a subconscious level I know that this was misleading and not standard operating procedure. It was wrong at any level. E-5.5.

In an attached page, Grievant detailed dates and time durations that he failed to adhere to the attendance policy. For 2016-17 at the VOC, he stated that the information Browne obtained during his due diligence was a good measure of what took place throughout 2016. He explained he could not provide precise dates and times. He again acknowledged that the information Browne gathered was a solid picture of what took place. He also acknowledged that his daily lunches increased as 2016 progressed. E-5.5, p.2.

For the years of 2013, 2014 and 2015, Grievant offered percentages of time that he was late to work. For 2015, he offered the following estimates: Late by 2 hours – 22%; late by 1 hour – 23%; late by 30 minutes – 12%; and late by 15 minutes – 11%. For 2014, he provided these percentage estimates: No occurrences of 2 hours or more; 1 hour – less than 30%; 20 to 40 minutes – 25%; and 10-15 minutes – 15%. Finally, for 2013, Grievant could recall only one tardy arrival of 30 minutes; and possibly a few tardy arrivals from lunch that were no more than 15 minutes. E-5.5, p. 2.

Grievant further wrote that he was willing to do whatever was in the best interest of the ESD in term of corrective actions. He offered to support future outreach events

without pay, if that was possible. Finally, he once more thanked Browne for the opportunity to provide information to resolve his "misconduct." E-5.5, p.2.

Grievant volunteered the percentage estimates for 2013 to 2015. Browne did not go back that far in his investigation. As a result, he did no follow-up on those years. He focused on what he could prove by his observations.

At hearing, Browne explained that employees that work outreach often "flex" their hours – commonly called "exchange time." Browne had no problem with that as long as they had prior approval from him.[4] The same was true for working from home – it had to be preapproved. Grievant acknowledged to Browne that he knew such time had to be preapproved. When working out of the same office as Browne in Kennewick, he would text or call Browne if he was going to be late. Tr. 56. He did not, however, receive prior approval for the VOC time at issue here.

On February 9, 2017, Browne met with Grievant. Goad also was present. Browne had Grievant review a fact finding log that he had prepared of his observations. E-8. Grievant admitted to those particular findings and signed the document. He told them he was seeking help to get better and he believed the fault was, at least in part, with his medication.

Goad responded that the problems had been going on since 2013, prior to his medication, so not to blame the medication. Grievant then took full responsibility for his actions. E-6.

[4] During the course of his investigation, Browne discovered that employees were not documenting exchange time. It is supposed to be taken within two weeks or during the pay period in which it occurs. He now requires employees to document and properly account for it, including when they take it. Tr. 57.

Browne reported his findings to Weber. Weber then consulted with Brad McGarvie of Human Resources to discuss the results of the investigation and predisciplinary procedures.

By letter dated March 23, 2017, Weber notified Grievant that the ESD was considering discipline up to and including dismissal for the following: repeated failure to work his scheduled hours; failure to submit leave slips for his absences; false certification of time sheets; and dishonesty to his supervisor. E-4.

Weber held a pre-disciplinary meeting with Grievant on March 31, 2017. McGarvie, HR Consultant Patti Jones and WFSE Council Representative Gus Gonzalez also were present. According to Weber, Grievant explained that because of his medication and his shock when Browne asked about his hours at the VOC, he hesitated when asked about the VOC's hours of operation. E-5.

Grievant further admitted to Weber that Browne's observations were true. He also admitted he knew he was supposed to work 8 a.m. to 5 p.m. on Thursdays at the VOC. He told Weber he felt humility, shame and disbelief about his actions. He apologized for the damage he had caused and trust he had destroyed; and he wanted to correct what he had done. E-5.

By letter dated April 27, 2017, Weber notified Grievant that he was discharged from employment with the ESD. In that letter, Weber found Grievant had committed the misconduct as alleged and that his conduct was a clear violation of ESD Policies 1016 and 3010.

Weber explained that Grievant knew his work schedule and followed the proper procedures when reporting to his supervisor at the Columbia Basin office; but did not do

so at the VOC. Weber believed Grievant purposely chose not to report attendance/tardiness to his supervisor on Thursdays because he thought he could get away with not reporting it.

Weber concluded as follows:

> It is a basic expectation of every position in this agency that employees work their scheduled work hours, submit leave slips for absences, use proper reporting procedures when calling in late or absent, and accurately report the hours they worked on their time sheets. Given the extensive amount of dishonesty and your repeated failure to meet these expectations, I have determined that discharge is the only appropriate level of discipline. E-5.

At hearing, Weber further explained why she determined it was appropriate to terminate Grievant. As described by Weber, Grievant committed serious policy violations that have to do with public trust and public dollars: Grievant knowingly prepared time sheets with false information. Weber considered it a form of theft. Tr. 143, 144.

Grievant testified that when he was confronted by Browne on January 12, he was on medication, not thinking right and stunned. He believed he misunderstood at least one of Browne's initial questions; he wanted to cooperate, but did not know what Browne wanted and did not know how to respond. Tr. 186-188.

Grievant further explained that when he wrote his January 27 statement for Browne, he did not clearly describe how he adjusted his schedule to accommodate veterans or his exchange time. Grievant said he was told by other, earlier supervisors to put down 8 a.m. to 5 p.m. regardless of any exchange time worked – for example if he worked on Saturday. Tr. 190.

Grievant also said that in hindsight, the percentages he put into his January 27 letter were fictional. He pulled them out of thin air. He explained he was not trying to mislead anyone; rather, his mind was foggy from his then medication and he was not in his right mind. He also thought by cooperating, he could put the matter behind him. He was adamant that he never stole time; and always worked more than 40 hours a week. According to Grievant, what he failed to do was account for adjusted time or exchange time. Tr. 194-195.

ESD Veteran's Employment Representative Nickolas Erickson submitted a written statement and testified in these proceedings. He worked a similar schedule to Grievant and also did outreach on Thursdays at the VOC. If he worked hours over his regular hours, he typically discussed it with his supervisor and took time off (exchange time), ideally during the same pay period. U-5.

At hearing, Erickson explained that how he dealt with exchange time changed with his supervisors. Under some supervisors, procedures were relaxed and he would just let them know verbally about his exchange time. For small changes in his schedule – if he took a longer lunch or went home a little early- he did not report them. Tr. 239. For longer "chunks" of time, however, he would. Tr. 242.

B. Parties' Positions

1. Employer

Based upon the facts of this case, the ESD's action in terminating Grievant was reasonable and appropriate. Whether preponderance of the evidence or clear and convincing evidence is used as the evidentiary burden, the State met its burden of establishing just cause.

In terms of sufficiency of the evidence, the State proved that Grievant engaged in the alleged misconduct; which essentially is time card fraud or theft. On January 12, 2017, in the meeting with Browne and Goad, Grievant admitted his misconduct. He also made admissions about his misconduct in his January 27, 2017 letter.

Grievant acknowledged that he understood that work which is not preapproved as exchange time or as work from home is against policy. He admitted that his Outlook calendar was misleading and not standard operating procedure. And, he further admitted that the information Browne collected in his investigation was a good measure of what took place in 2016. Finally, Grievant offered to do further outreach without pay as corrective action. Why would he make such an offer if he had been using exchange time as he now claims?

Grievant's hearing testimony that the January 27 statement was untrue and he wrote it to save his job is not credible. First, it indicates he was willing to lie. Second, it does not make sense since he also said he did not believe he was losing his job. What does make sense is that now that he has lost his job, he is willing to say whatever is necessary to get his job back. His explanations and stories are inconsistent and have changed over time.

Grievant's claim that his medication was the problem also is not credible. On Mondays, Tuesdays, Wednesdays and Fridays, Grievant had no problem calling in and talking to his supervisors about comp time, sick time and other issues related to time. It was only Thursdays that were the problem. His claim that medication caused the problem on that one day is an excuse and too convenient.

In addition, Grievant produced his January 27 statement after several weeks – it was not forced in front of him. His statement was a methodical, well thought out explanation of what had occurred.

In terms of procedural requirements, Grievant admitted that he knew his behavior was against policy and wrong. Browne conducted a thorough and fair investigation. He observed Grievant's behavior multiple times in order to verify what was going on; he then confronted Grievant who admitted his misconduct.

At hearing, the Union suggested that Browne's Fact Finding Log signed by Grievant on February 9, 2017 (E-8) should have been provided to the Union and attached to the predisciplinary letter pursuant to the CBA. There was no prejudice to the Union or Grievant, however, by the State's failure to do so. Grievant already had admitted twice to the wrongdoing contained in this log; Exhibit 8 was an additional piece of evidence.

The State's decision to terminate Grievant was reasonable. This was the first time Weber had faced misconduct of time card theft/fraud. There were no comparative cases at hand. Her termination letter explained well her reasons for termination. That is, Grievant's misconduct was a violation of public trust and a serious policy violation. It is important to focus on the amount of time involved and the consistency of the misconduct. The dishonesty involved raised it to a terminable offense. This was not just an attendance issue.

2. <u>Union</u>

First, the appropriate standard of proof in this case is clear and convincing evidence. This is especially so because Grievant is a disabled veteran - the very

population he helped in his job and the Employer is trying to assist. The ESD knew he had some disability/medication issues. Under these circumstances, the higher standard of clear and convincing evidence is warranted.

It is important for the arbitrator to carefully look at the 13 events that Browne allegedly observed over a five-month period. On many of these occasions, Browne's notes and observations contain limited information and no further inquiry was made about the particular observed event. For example, on August 18th the note is that Grievant's car was not at the VOC. There was no further explanation or inquiry as to where he was.

In addition, the Employer failed to provide full information (E-8) about the 13 events to Grievant and the Union until after his termination.

When first confronted in 2017, Grievant likely would have signed anything Browne submitted to him. Neither the Union nor Grievant can explain why he signed what he did. Nor is there a good explanation for Grievant's January 27 statement. In that statement, he mentioned exchange time, but fell on his sword and did not blame anyone other than himself. It is an almost incoherent confession of events and times that goes back four years.

All of this is important because Erickson testified that exchange (or comp) time was administered in a loosey-goosey way before Browne arrived. If, for example, Erickson worked a couple of hours of outreach, he then took a couple of hours off without telling his supervisor. It was not a huge deal. These facts are similar to Grievant's situation. Grievant, at times worked but his time slip for that day does not show it (for example, Veteran's Day.)

In this context, the ESD terminated an eight-year employee with outstanding performance evaluations. The Employer failed to conduct minimal follow-up on either the 13 observed events or Grievant's account of his actions. There was no careful analysis of the exchange time situation.

The Union agrees that Grievant's time slips were inaccurate based upon the procedures in place when he was an employee at the ESD. There were, however, problems with ESD procedures for accounting of time, and particularly exchange time. If there is discipline to be imposed, it is well short of termination. Grievant is a vulnerable adult as a disabled veteran, and he deserved more protection and the opportunity to correct his behavior.

The ESD's narrative is that Grievant stole time and fraudulently submitted time slips. Grievant was not guilty of stealing time; rather, he is guilty of self-regulating his time and adjusting his time. He did an amazing job for veterans and the ESD lost a valuable asset when it fired him. Termination was too severe. The Union's grievance should be granted and Grievant should go back to work at the ESD.

C. Analysis

Just cause requires that the discipline of an employee be reasonable in light of all the circumstances. Elkouri & Elkouri, *How Arbitration Works,* 15-4, 15-5 (7th Ed., 2012). In determining just cause, arbitrators typically decide if the employer established the alleged wrongdoing, provided a fair process, and imposed an appropriate penalty. I must be convinced based upon the record that the Employer established just cause for the discipline imposed.

The Union argues that I should apply the standard of clear and convincing evidence. I do not typically apply a formulaic approach to burden of proof in arbitration. Still, I am cognizant that the alleged misconduct is serious and stigmatizing. I have taken that into account in my evaluation of the evidence and used a heightened evidentiary burden, essentially, the clear and convincing standard.

As an employee of the ESD, it was Grievant's responsibility to adhere to his assigned work schedule, keep management informed of any deviations, monitor his own leave balances, and accurately document time worked and leave taken. The evidence shows that he was notified of these responsibilities, and he admitted that he knew them.

There is no dispute that Grievant's schedule was 8 a.m. to 5 p.m., Monday through Friday. When he performed outreach at the VOC on Thursdays, his work hours remained the same.

From his observations, Browne discovered that Grievant was not consistently working those hours on Thursdays. These were not minor, occasional deviations in schedule. Rather, they were repeated and more than two hours. Importantly, when he was confronted on January 12 about these observed deviations in schedule – Grievant ultimately admitted that Browne's observations were accurate.

More than two weeks later, Grievant voluntarily wrote a statement that not only admitted his actions but expanded upon his deviations from his regular schedule. Grievant had not notified management about these changes on Thursdays, nor had he requested leave. On his time sheets, he did not report these absences or changes.

These basic facts are undisputed and largely admitted. I find they constitute clear and convincing evidence that Grievant violated ESD policies and submitted inaccurate and false time slips.

Arbitrators have not hesitated to uphold discharge or discipline of an employee if it is found the employee intentionally falsified their own time card. It is often considered an act of theft. Brand & Biren, *Discipline and Discharge in Arbitration*, 299-300 (2nd Ed. 2008). Typically, arbitrators reduce a disciplinary penalty only if there are mitigating circumstances or the employer failed to prove it was an intentional act as opposed to carelessness. *Brand & Biren* at 300.

The Union and Grievant claim that his then-medication played a role in his actions. I am not persuaded by this argument. On other days of the week, if Grievant needed a schedule change, he sought approval from management. And, other than the claim that medication played a role, there is no evidence that establishes that such medication prevented or interfered with his ability to communicate with his supervisor, show up for work on time or accurately report his time worked on one day of the week. After Browne confronted him, Grievant also had ample opportunity to clarify and explain his actions. There is no evidence that his medication interfered with his ability to do so.

The Union and Grievant emphasize that he was shocked when confronted by Browne, and fell on his sword in his admissions. The Union argues there is no good explanation for his admissions or his written statement – which was almost an incoherent confession.

Once again, I am not persuaded by these arguments. There is a simple, and logical, explanation given the evidence. And, often, the simplest explanation is the best.

That is, Grievant's admissions were the truth. He engaged in the misconduct as Browne directly observed.

The Union argues that I should carefully review Browne's 13 observations and recognize that many contain limited information that fail to establish Grievant's whereabouts or what he was doing. The Union contends Browne's investigation was inadequate.

I have carefully reviewed the evidence of Browne's observations. Browne admitted that some were limited due to time and his other work duties. He wanted to make sure of the facts before he spoke with Grievant, and so he extended his observations until he felt he had enough accurate information and a pattern of behavior.

On a number of occasions, Browne observed Grievant's vehicle at his residence and then saw him arrive at VOC about two hours late. Grievant admitted Browne's observations were an accurate measure of what occurred throughout 2016. Under these circumstances, I find Browne's observations sufficient and his investigation adequate.

As another procedural matter, the Union contends that the Employer failed to provide full information about the 13 events (E-8) until after his termination in violation of the CBA.

Employer Exhibit 8 is a two-page fact-finding log prepared by Browne of his 13 observations. It was presented to Grievant on February 9, 2017, for his review and signature. He signed both pages. This log contains the same information that was presented at the meeting of January 12, 2017. Prior to February 9, on January 12 and January 27, Grievant had admitted Browne's observations were accurate/and or a good

measure of his actions for 2016.

As a result, I find that Grievant, and later the Union, had ample opportunities to respond to the information presented in Browne's 13 observations. I agree with the ESD that under these circumstances, there was no prejudice to the Union and Grievant in the Employer's failure to provide the log sooner.

The Union stresses the importance of exchange time and the loose way it was administered by management at the ESD. According to the Union and Grievant, he worked exchange time that was not properly taken into account by management. Grievant is adamant that he always worked his 40 hours for the ESD.

It is true that evidence shows that prior to Browne's arrival, exchange time was loosely administered by management - within certain parameters. Exchange time was not identified and recorded in a way that allowed for a strict accountability. It was, in part, an employee honor system. That is, as long as the employee worked outreach outside of their regular hours they could take exchange time within the same pay period. Typically, however, they would communicate with management about any significant changes in work schedule.

Regardless of loose accountability practices, however, the evidence is clear that it was the employee's responsibility to accurately report their time and communicate any deviations in their schedule to management. In his written statement of January 27, Grievant wrote:

> I fully understand the work that was not preapproved in terms of exchange time or working from home are against policy, that although these things occurred from time to time, I do not want to claim that this was taking place weekly.

I credit this statement. Taking it into account, as well as the record as a whole, although Grievant may have been entitled to some exchange time, I am not convinced that any such exchange time would offset the many hours he was admittedly absent on Thursdays. It was his responsibility to keep accurate work hours and communicate with his supervisor. He repeatedly did not do so on Thursdays. This was not carelessness; but rather, as he admitted, Grievant knew it was wrong.

Finally, the Union argues that the penalty of discharge is excessive, particularly given Grievant's eight-year tenure and outstanding work in his job. The Union argues that the Employer should have given Grievant an opportunity to correct his behavior because he was a valuable asset to the ESD.

I have considered Grievant's tenure and his fine work as a case manager. I have considered that he, himself is a disabled veteran and that he cared about veterans he served. He is passionate about such work. Still, Weber said it well – his policy violations were serious and breach of the public trust. He repeatedly and knowingly provided inaccurate and false accounts of his time. Under these circumstances, the ESD's decision to terminate Grievant was a reasonable penalty.

V. CONCLUSION

For the foregoing reasons, I conclude there was just cause to terminate Grievant. I will enter an award that denies and dismisses the Union's grievance.

In arriving at my decision, I have carefully reviewed all testimonial and documentary evidence. Even if not mentioned, I have considered all of the facts, arguments and authorities submitted by the parties. I have focused my opinion on

matters that I believe needed to be addressed and those which were crucial to my decision.

Pursuant to the CBA, I will order that my fees and expenses be shared equally by the parties.

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
WASHINGTON FEDERATION OF STATE EMPLOYEES	)	
(Union)	)	AWARD
	)	AAA No. 01-17-0005-9572
and	)	SAMUEL RABIDEAU GRIEVANCE
	)	
WASHINGTON STATE DEPARTMENT OF EMPLOYMENT SECURITY	)	
(Employer)	)	

Having carefully considered all evidence and arguments submitted by the parties, the Arbitrator concludes that:

1. There was just cause to terminate Grievant.

2. The Union's grievance is denied and dismissed in its entirety.

3. The parties shall share equally the Arbitrator's fees and expenses.

Respectfully submitted,

Kathryn T. Whalen
Arbitrator
Date: July 9, 2018